

Senate Bill No. 115

Passed the Senate May 6, 2009

Secretary of the Senate

Passed the Assembly August 20, 2009

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 1360, 3103, and 18150 of, and to add Section 1225.5 to, the Government Code, relating to public employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 115, Lowenthal. Public employment.

The California Constitution requires Members of the Legislature, and all public officers and employees, to take and subscribe a specified oath of office. The California Constitution permits inferior officers and employees to be exempted by law from this requirement.

This bill would require that a public employee or applicant seeking public employment be permitted to decline to take and subscribe the oath of office based on moral, ethical, or religious beliefs that conflict with his or her ability to take and subscribe the oath without mental reservation, if he or she is otherwise willing and able to uphold the United States Constitution and the constitution and laws of this state and to complete the duties of employment. The bill would require that person to sign a statement that he or she declines to take and subscribe the oath required pursuant to existing law, based on moral, ethical, or religious beliefs that conflict with his or her ability to take that oath, as specified, and to take and subscribe a specified alternate statement to that effect. The bill would except from these provisions a public officer, employee, or applicant for public employment who is elected or who serves at the pleasure of an elected official. The bill would also make conforming changes and make a related statement of legislative findings.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) Section 3 of Article XX of the California Constitution requires that Members of the Legislature and all public officers and employees take and subscribe the oath that is set forth in its

provisions and defines public officer or employee for these purposes.

(b) Section 3 of Article XX of the California Constitution permits the Legislature to make exceptions from the oath requirement for “inferior officers and employees.”

(c) The California Supreme Court, in the case of *Vogel v. County of Los Angeles* (1967) 68 Cal.2d 18, struck down the second paragraph of the oath set forth in the provisions of Section 3 of Article XX of the California Constitution as an unconstitutional violation of the rights guaranteed by the First Amendment of the United States Constitution.

(d) Some applicants for public employment who are loyal citizens and well qualified for their respective jobs are precluded by their religious beliefs from taking oaths.

(e) It is necessary to create an appropriate exemption for loyal and qualified employees and applicants for public employment based on the fundamental American value of freedom of religion.

SEC. 2. Section 1225.5 is added to the Government Code, to read:

1225.5. (a) Notwithstanding any other provision of law to the contrary, a public employee or applicant seeking public employment shall be permitted to decline to take and subscribe the oath required by Section 3 of Article XX of the California Constitution based on moral, ethical, or religious beliefs that conflict with his or her ability to take and subscribe to the oath without mental reservation, if he or she is otherwise willing and able to uphold the United States Constitution and the constitution and laws of this state and to complete the duties of employment. Any person exempted from taking the oath pursuant to this section shall sign a statement that he or she declines to take and subscribe the oath required by Section 3 of Article XX of the California Constitution based on moral, ethical, or religious beliefs that conflict with his or her ability to take and subscribe the oath without mental reservation and instead take and subscribe the following statement:

“I, _____, do solemnly affirm that I will uphold the Constitution of the United States and the Constitution and all other laws of the State of California; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.”

(b) The option provided by this section to decline to take and subscribe the oath required by Section 3 of Article XX of the California Constitution based on moral, ethical, or religious beliefs shall not apply to a public officer, employee, or applicant for public employment who is elected or who serves at the pleasure of an elected official.

SEC. 3. Section 1360 of the Government Code is amended to read:

1360. Unless otherwise provided, and subject to the limitations set forth in Section 1225.5, before any officer enters on the duties of his or her office, he or she shall take and subscribe the oath or affirmation set forth in Section 3 of Article XX of the Constitution of California.

SEC. 4. Section 3103 of the Government Code is amended to read:

3103. Subject to the limitations set forth in Section 1225.5, the oath or affirmation required by this chapter is the oath or affirmation set forth in Section 3 of Article XX of the Constitution of California.

SEC. 5. Section 18150 of the Government Code is amended to read:

18150. Subject to the limitations set forth in Section 1225.5, the oath required by this chapter is the oath set forth in Section 3 of Article XX of the Constitution of California.

Approved _____, 2009

Governor